

THE WHITE HOUSE

WASHINGTON

May 14, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler:

I write in response to your letter dated May 10, 2019, which I received yesterday, inviting me to testify tomorrow before the Committee on the Judiciary ("Committee"). Putting aside the very limited notice provided by your letter, the more important point is that, based on clearly established constitutional doctrines and precedent, close advisers to the President in administrations of both political parties have consistently declined invitations to testify before congressional committees. See *Immunity of the Assistant to the President and Director of the Office of Political Strategy and Outreach from Congressional Subpoena*, 38 Op. O.L.C. __, *1 (2014); see also Letter from Robert F. Bauer, Counsel to the President, to Darrell E. Issa, Chairman, Committee on Oversight and Government Reform (June 16, 2011). Therefore, in keeping with settled precedent, I must decline the invitation to appear before the Committee tomorrow.

I would, however, like to respond to your request for a brief explanation concerning the legal basis for the President's decision to make a protective assertion of executive privilege over the materials subpoenaed by the Committee. The Committee served a subpoena on the Attorney General seeking an extraordinary volume of documents. That subpoena requested not only the redacted portions of the Special Counsel's report, but the entire investigative file of the Special Counsel, which the Department of Justice has informed you includes millions of pages of highly sensitive classified and unclassified documents, law enforcement information, information about sensitive intelligence sources and methods, and grand jury information that the Department is prohibited by law from disclosing. Despite the fact that the Department of Justice was engaged in ongoing negotiations with the Committee, you abruptly decided to end the accommodation process by noticing a Committee vote recommending an unwarranted finding of contempt against the Attorney General. The Committee rejected the Department of Justice's reasonable request that you defer the vote until the President could make a final decision on whether to assert executive privilege. It was on that record that, acting at the Attorney General's request and upon his recommendation, the President determined to make a protective assertion of executive privilege over the undisclosed materials subject to the subpoena.

The Committee's decision to repeatedly ignore the Attorney General's reasonable accommodations suggests that the Committee does not genuinely desire to reach agreements in order to obtain information, but instead is merely bent on inciting unnecessary confrontations

Here, as we have done in every matter, we have followed longstanding Executive Branch positions and precedents established by prior administrations of both political parties. If you would like to discuss any of the issues addressed in this letter, please let me know.

Sincerely

Pat A. Cipollone
Counsel to the President

cc: The Honorable Doug Collins, Ranking Member

Attachments

Tab A	May 7, 2019 Boyd Letter
Tab B	May 8, 2019 Boyd Letter
Tab C	May 8, 2019 Letter from William P. Barr, Attorney General, to the President



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 7, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler:

As you know, the Attorney General has repeatedly sought to accommodate the interests of the House Committee on the Judiciary in the investigation conducted by Special Counsel Robert S. Mueller, III. On April 18, 2019, the Attorney General voluntarily disclosed to Congress the Special Counsel's report, which was intended to be "confidential" under the applicable regulations, with as few redactions as possible, consistent with the law and long-established confidentiality interests of the Executive Branch. He also made available to you and other congressional leaders a minimally redacted version of the report that excluded only grand-jury information, which could not lawfully be shared with Congress. In response, you refused even to review the minimally redacted report, and you immediately served a subpoena, dated April 18, 2019, demanding production of the fully unredacted report and the Special Counsel's entire investigative files, which consist of millions of pages of classified and unclassified documents, bearing upon more than two dozen criminal cases and investigations, many of which are ongoing.

Since then, the Department of Justice has offered further accommodations to the Committee. In particular, the Department offered to expand the number of staff members who may review the minimally redacted report; to allow Members of Congress who have reviewed the minimally redacted report to discuss the material freely among themselves; and to allow Members to take and retain their notes following their review. We expressed our hope that these further accommodations would prompt you and your colleagues actually to review the minimally redacted report, which would allow the parties to engage in meaningful discussions regarding possible further accommodations of the Committee's additional expansive requests. We further proposed a framework for those discussions, and made clear that we were open to conducting them on an expedited basis.

Unfortunately, the Committee has responded to our accommodation efforts by escalating its unreasonable demands and scheduling a committee vote to recommend that the Attorney General be held in contempt of Congress. In particular, the Committee has demanded that the Department authorize review of the minimally redacted report by all 41 members of the Committee, as well as all members of the House Permanent Select Committee on Intelligence,

TAB B

TAB C

In these circumstances, you may properly assert executive privilege with respect to the entirety of the Department of Justice materials that the Committee has demanded, pending a final decision on the matter. As with President Clinton's assertion in 1996, you would be making only a preliminary, protective assertion of executive privilege designed to ensure your ability to make a final assertion, if necessary, over some or all of the subpoenaed materials. *See Protective Assertion of Executive Privilege*, 20 Op. O.L.C. at 1. As the Attorney General and head of the Department of Justice, I hereby respectfully request that you do so.

Sincerely,

A handwritten signature in dark ink, appearing to read 'WP Barr', with a stylized, flowing script.

William P. Barr
Attorney General